



By email 13.09.21

Dear Sir,

### IG00948 –FOI Internal Review

We have recently been experiencing high volumes of requests and workloads (often critical and unpredictable by nature) with very limited resources. We would like to take this opportunity to thank you once again for your continued patience with regards to this matter and to apologise for the delay in getting back to you.

I can confirm that your request for information made under the Freedom of Information Act 2000 (FOIA) has gone through an internal review process. Please find attached a copy of the assessment grid and below, a further supplementary explanation, so that South Wales Fire and Rescue Service (SWFRS) can share the final outcome with you in a transparent manner.

#### Explanation of outcome

**After reviewing the FOI response provided in relation to reference IG00948, the positioning of SWFRS remains to uphold the original outcome, in declining to reveal information on this occasion.**

The application of section 40 personal data was in our assessment correctly applied, this means that a public interest test (PIT) was not required at the time, as it constitutes an absolute exemption. However, it is noted that efforts were made in the refusal notice to explain the original decision to you.

Although not mandatory\* for a refusal relying on Section 40 personal data (this is recognised as a qualifying exemption), SWFRS provided advice and assistance to yourself, the requestor.

\*Section 16 of the FOIA, indicates public authorities should provide advice and assistance in the following circumstances: to clarify requests, to help provide the information requested in an acceptable format, to narrow responses which exceed the cost limit, when information is refused under Section 21 (accessible by other means), Section 22 (information intended for future publication) or when the request is transferred to another public authority.

Had the requestor wished to refine their questions posed, as per advice and assistance, the amended question(s) would likely have been treated as a new FOI request. However, it is in our view that the information required remained largely the same:

- A. The requestor did not broaden information required to a wider aggregated level e.g. information by postcode, district or county,
- B. Nor, did the requestor decide to follow the Incident Recording System (IRS) process\*\* if they still wished to gain specific property related information, where relevant.

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\*\*SWFRS has a standard procedure for requesting information about specific properties (which likely relates to personal data of the owner/occupant), this is a robust process involving: application, ID checks, redactions and explicit consent from data subject(s) or their respective Lasting Power of Attorney, where appropriate and legitimate and it also carries a standard fee approximately £100.49. IRS is an established system to provide the right information to the right people at the right time, in an organised and central way which provides protection and fairness for all.

It is also worth noting that the requestor has not proposed another valid legal basis to enable such a disclosure to be considered by SWFRS.

#### Previous requests for similar data

SWFRS can confirm that it has previously been in touch with the ICO on similar matters relating to providing incident information (usually held on IRS) to individual parties. The ICO have in such cases, confirmed to us that disclosure can be discretionary, unless of course SWFRS are legally obliged to disclose via a legitimate Court Order. On receipt of information SWFRS would be happy to discreetly disclose the information as ordered.

#### Personal Information

The counter argument from requestor indicates that a property's ownership can be checked on the Land Registry and that this in turn means that they already know a person's identity and should be able to gain the incident information. We respectfully point out that the Land Registry, whilst identifying an owner (if registered) does not reveal specific information about any suspected or realised incidents (attended by SWFRS) that may or may not have occurred at the property. This incident information if held and revealed, would constitute additional information that could likely both identify and relate to an individual (owning or occupying a specific named property, at the time), constituting their personal data.

The legal definition of what constitutes personal data is quite broad, reading as follows:

*"Personal data is information that relates to an identified or identifiable person who could be identified, directly or indirectly based on the information."*

Whilst we can appreciate that what constitutes personal data can sometimes be rather subjective, address, date(s) and summary of actions may not seem to be immediately obvious as personal data, however possibly alone or certainly with other information known (or publicly available) it is likely to indirectly identify and relate to an individual.

An individual has the right to certain freedoms under the Human Rights Act 1998. Generally, individuals have a right to enjoy their home peacefully without intrusion by a public authority. Under Article 8 – an individual has the right to respect for their family and private life, their home and correspondence. Article 8 would likely be breached if such incident information were disclosed to another person /person(s) without consent.

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We can appreciate that Article 8 is indeed a qualified right, accepting that public authorities can interfere with rights to respect for private and family life but only if it would be in the interest of the wider community or to protect other people's rights. However, SWFRS can confirm that it has not been approached by Police or other authorities with any prior concerns and we are unable to "take sides" in this matter.

The fact that the identity of a property owner can readily be obtained on the Land Registry, does not we believe, have a positive bearing as a factor to release information to you. In our assessment, the above point only reinforces our argument that- with the additional knowledge of dates/ details of an incident (if released as requested) it would likely confirm specific ownership at the time of incident (matching to land Registry date and incident date) and thus the incident information could be tracked/ attributed to a specific property owner.

We treat incidents with respect and confidentiality and the IRS report (used and respected nationally) acts as an official document noting a headline of our attendance and actions, the IRS itself goes through strict peer and quality reviews and has limited access rights.

If an incident has occurred at a property, the incident can both identify and relate to specific individuals who are linked to the property or perceived to be linked to the incident due to affiliation with the property. This can have very substantial consequences (embarrassment, harassment, eviction etc.) if revealed. It may in certain circumstances lead to unfair or unjust negative impacts on social circumstances, private/business relationships or further actions being brought against individuals.

#### Other actions

If it is suspected that any criminal wrong doing has been committed or observed, our recommendation would be that any allegations of unlawfulness/ criminality are promptly reported to the relevant authorities, usually Gwent or South Wales Police Forces to investigate appropriately. The investigating authority will then in turn decide whether or not to pursue in submitting an information request to SWFRS directly themselves. Legal basis are required as well as authorisation from Senior Ranking Officers. At this point and with a successful Police application, SWFRS would actively get involved as required to support public interest (e.g. prevention and detection of crime or apprehension or prosecution of offenders).

Any such incidents where it is established that, for the safety and wellbeing of the public (e.g. adjoining or nearby affected residents), individuals may need to know certain information about incidents, release is considered on a case by case basis e.g. under "vital interests" with limited scope. As a responsible FRS our relevant safety teams take all appropriate steps to protect the community following pro-active activities, in line with its duty as a Category 1 responder and to raise awareness and reduce risk of fires and other emergency incidents (such as water safety/rescue) across the South Wales area.

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Companies that are not abiding by FRS formal instruction (e.g. improvement notices) are issued relevant escalating notices/actions at an appropriate timings. If organisations fail to engage with SWFRS, actions are not undertaken or completed to the correct standards within stipulated timescales, the case may be published onto our public facing register. You may visit: <http://www.cfoa.org.uk> to view enforcement notices that are issued by SWFRS and are publicly available on the National Fire Chiefs Council website. You can read the UK Government Garden Fire Rules for more information on garden bonfires here <https://www.gov.uk/garden-bonfires-rules>

If the FRS receive concerns from other Local Authorities or Powers, these would be suitably investigated and progressed accordingly in line with our public task duties and organisational procedures. If the Council believe that there is reason to investigate this particular issue, they can also make formal requests directly to SWFRS for consideration. Some information may be redacted if the consent of the owner/occupier at the time is not provided, unless there is another valid legal basis such as a legitimate Court Order for the disclosure of relevant information.

You mention that photographs are available from local residents, if this is the case, it might be beneficial that photographs are shared by owners (with rights to any images) with Police accordingly if they believe that there has been unlawful wrong doing.

SWFRS believes that this now concludes your internal review.

If you would like to make another request or have any queries please do not hesitate to contact Information Governance and Compliance: [dataprotection@southwales-fire.gov.uk](mailto:dataprotection@southwales-fire.gov.uk)

If you are not satisfied, you also have the right to make an appeal to the ICO, please find their details below. There is no charge for making an appeal.

Information Commissioner's Office-Wales,  
2nd Floor,  
Churchill House,  
Churchill Way,  
Cardiff,  
CF10 2HH.

Kind regards,

**Rachel Trusler**



Gwasanaeth Tân ac Achub  
De Cymru  
South Wales  
Fire and Rescue Service

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